

THE RIGHTS OF THE INSANE.

Two very important questions, one of fact and the other of law, are brought into connection with the forced seclusion of insane patients in so-called hospitals or asylums where no medical treatment is employed. In this brief paper it will be attempted to prove that the rights of the insane are in such cases violated, and that the remedy to such an evil lies in the proper amending of the law in order that a legally authentic record would prove the necessity of appropriate medical treatment for each patient.

No one denies at the present time that many vital questions of justice, legislation, social economy, and finance, are involved in the treatment of lunacy. Still, many persons are not aware of the moral obligation devolving upon every citizen to guard the operation of the law under which the seclusion of persons who are insane, and of those who are supposed to be so, takes place, in order to avoid any possible false accusation about the legality of such an act; also to see how the provisions for their care are prepared by boards of trustees or governors; and, finally, to vindicate the rights of those who cannot defend themselves.

What seems to be positively overlooked is the importance and value of medical treatment, as well here in the whole of America as in England and elsewhere. Now, we may read in *The Journal of Mental Science* the following remarks, showing what is going on in England :

These reports (blue books) show that, on the whole, there is an immense amount of thought, and care, and effort, exercised in the treatment of the insane by all who have to do with them. Year by year the efforts toward a more perfect system of treating and managing them seem steadily to increase in all but one direction. That spasmodic and individual efforts are made in this direction is true, but on the whole the medical treatment of the diseases which are comprised under the term insanity stands still, as compared with the asylum building, general managing, etc. * * * * Three books about a disease with nothing medical in them! Everything that concerns the treatment of those laboring under this disease professedly gone into, and not a word about medicines! Talk of modern skepticism—the reports of the commissioners and reporters in lunacy are the finest examples of medical skepticism extant; for they don't deny, deride, or damn with faint praise—they simply ignore the whole science and its professors. It may be that this will be better in the long run for the medical treatment of insanity, but it is hard to see it if its practical effect is to encourage asylum doctors to ignore the medical aspects of patients, and sink into a state of lethargic indifference to the unsolved problems in brain pathology, diagnosis, and therapeutics, that daily come before them.

The editor, Dr. Maudsley, does not pretend that no scientific progress is attempted or made in public or private asylums. It is admitted that in America we possess many asylums in which men of great merit open and follow new roads to scientific progress. Many institutions might be mentioned in which such efforts are made, and

we of the medical profession may congratulate ourselves over the spirit which animates these scientific pioneers. But if we consider only the individual interest of each patient who is immured in an asylum where a positive medical treatment is impossible, and if, with Dr. Maudsley, we sum up the results of a non-therapeutical practice (brought on by the medical skepticism of administrative boards), then we may see the need of amendment of our laws on this subject. Evidently there is a confusion in the given powers and qualifications to serve the people in this matter. No by-laws should exist in opposition to State laws; and if that were so, medical responsibility would have fair play to show what it might do when supplied with everything necessary for its scope and our benefit—the recovery of the patients.*

Not the custody, but the cure of the insane should be the sole object. Such reform of the law, if I am not mistaken, is the *res vestra agitur* of such an association of lawyers and physicians as this. Common efforts would bring at last an immense benefit—namely, that insane patients must be cured, and not be considered, *prima facie*, as beings to be put in custody for their lifetime. Certainly such necessity overshadows all secondary questions of housekeeping details and comfort, though important they are. In general economy, principles must be adopted which infallibly must lead to practical results, as in commercial affairs or in industry. Is it not established that a sufficient capital must be embarked to obtain profitable products? It is the same in our case; an adequate, well-paid staff of physicians would take care of patients, employ all their skill and ingenuity to empty those immense reservoirs of human miseries, and free us of that constantly increasing number of insane, and of the enormous expense we are obliged to bear.

How is it possible that two, three, or even four physicians can take proper care of, and study the particular cases of four hundred, six hundred, or sometimes one thousand patients, shut up in one asylum? We believe that a physician having charge of fifty patients has as many as he can properly take care of, with the view to cure them.

Far from such rational and practical method, what do we see in almost every country? Honorable Boards, meaning well in their own and the generally adopted views, intrusted with legal and ad-

* State or chartered institutions should have no more privileges before the law than other institutions for the insane; all should be positively submitted to inspections, either of Commissioners in Lunacy or members of the State Boards of Charities. And any interested party should have free access to the records.

In order to give an idea of what is considered the best general plan of an asylum, we refer to the Medical Register of New York, 1873-74, page 138, in which will be found the so-called advantages of a new *State Asylum*. Amongst numerous *appartements* will be noticed the Steward's and the Matron's, with offices, reception and store rooms; but there will be found no physical and chemical laboratory,—no lecture room,—no clinical wards,—no place for anatomical and pathological researches,—no rooms for scientific collections,—no private apartments for the physician,—no private study. The programme boasts of a better opportunity for classification—"by separating more completely the various classes from the *quiet* to the most *disturbed*." Here, again, clinical instruction is positively denied, or, at least, positively ignored, by both trustees and physicians!

ministrative powers to do with the insane what they think best, without control. Now, the most moderate and respectful criticism has shown the inefficacy of the means these Boards put in the hands of their physicians; nay, sometimes such Boards think they must diminish the number of medical officers, lower their dignity, or even not give them any remuneration. It may easily be understood that in such general circumstances, physicians must do their best to please the narrow views of those in whose dependence they are placed; eventually they will even defend that system, and neglect their duties, as *The Journal of Mental Science* has shown to be the case. We need in this country something higher and more independent. We want a law which everybody must obey and by which the medical profession shall become responsible for its acts. Unfortunately we have a legal mechanism unfit to serve the interest of the people. Even the latest law and the recent act concerning the State Board of Charities and the Commissioner in Lunacy, are full of errors, contradictions, and embarrassments that prevent the aim being reached.

If our asylums are made for the cure, and not for the perpetual custody of patients, why should a law not say so? Why should administrative functions surpass the legal and medical ones?

A responsible head physician, having for principal object science and the medical treatment, ought to have a sufficient and competent staff around him—a staff furnished with the necessary instruments, material and moral, to cure the patients. Anatomical and chemical laboratories and lecture-rooms should be provided and well furnished. We should have less of balls, billiards, and magic-lantern exhibitions as necessary to cut the monotony of asylum life. This chief physician ought also to be intrusted with the power of admitting or rejecting affidavits concerning the mental state of a so-called insane person; and be free (nay, the law ought to command it) to discharge a patient when cured, or sufficiently *compos mentis* to have a trial to resume his position in society. No intervention, either administrative or judiciary, appears here necessary. The responsible physician must be the conscientious expert and judge of such cases, and possess the power to fulfil his mission. If a too-absolute power could be feared, let, then, the superintendent have such jurisdiction only when in council with his medical assistants or his consulting physicians. Such a measure might also serve to curb too free a use of administrative authority on the part of head physicians.

When we consider the important relation of the subjects under consideration, we may wonder that superintendents of asylums are not made (*de jure*) members of the Board of Health of their county. They would complete that Board whose functions embrace as well the conditions of mental as bodily welfare. The Hon. Dorman B. Eaton explained lately at the New York Convention of the American Public Health Association, why a Board of Health determines its own sphere of action, makes the bills by which its own action is legalized, issues summons, sits in judgment, and uses its own officers to carry its decisions into effect. Evidently, the sanction of such power must be the immediate benefit felt by the public at large.

If we inquire into the laws and customs relating to the insane in past and present times, it is very curious to find that, on account of, and in order to prevent, accidents caused by "furiosi," maniacs, etc., measures are taken against them, but that not a single word is to be found in favor of their rights as citizens of a civilized community. Nothing but the oblivion of human rights, or the fear, contempt, and possibly the degradation of the poor patients, can explain such fact. Even in the country of the celebrated Pinel, a curious instance of public neglect of human dignity is found in the text of a law (Aug. 24, 1790) which assimilates the insane to dangerous, wild, rambling animals. It is against that want of feeling, against the absence of principles of justice, that we should urge reform. Let us ask why a law should not protect the life and dignity of the insane? why it should not punish those who violate their rights?*

Let us consider the result of an obligatory legal compulsion for treating the insane medically. A law on the obligatory medical treatment of insane persons confined in public or private asylums, has for its objective basis an inviolable right and a social duty, out of which we may expect, first, the almost certain cure of every patient; secondly, the positive diminution of an evil which attacks principally the moral and educated classes of society; and thirdly, the benefit of the better health (moral and physical) of the community. It is very easy to show why the insane are entitled to the best medical treatment when secluded from their friends.

If, in the interest of society, the insane may be temporarily deprived of their liberty, it is but a preventive measure, just and acceptable in certain conditions, out of which a positive right must be acknowledged, namely, that the law which forcibly isolates or secludes a patient from his friends and family assumes, *ipso facto*, the responsibility of a real and scientific medical treatment. A public convenience or a public right can never include the violation of an individual one, or the non-accomplishment of a duty, such as must be the case if an insane person is secluded in an asylum, unprovided with what is necessary for his or her recovery—in an institution where the number of physicians is quite inadequate to the work to be done. Even were there sufficient medical attendance for ordinary emergencies, we must allow for the peculiar interference of State officers, as the Governor, the Attorney-General, Courts, etc., which, at times, prevents asylum physicians from performing the duties they are paid for, since they are often employed on outside commissions, legal or scientific. The remedy for this evil is obvious; the law should prohibit any judge or lawyer to subpœna an asylum officer to outside cases. Of course, when thus employed, the observation of a patient and his individual treatment are stopped at once, and in such case the remaining officers, having their usual duties also, must

* Evidently a civil law protecting the insane does not mean an interference with the feelings of love and duty in the family circle. Families are free to go beyond the law, but not to the extent of proscribing the general law, which insures to everyone in his right mind the use of his own property. Such law means the consecration of individual liberty and autonomy, in consequence of which she takes upon herself to care and provide for the patient when himself or his family cannot do it. In one word, the law represents a social obligation which does not prevent, but rather encourages, the moral law of family ties and support.

neglect the one or the other. Trustees consent to, or are obliged to permit, such irregularities, and the poor abandoned patient (outside of the reach and influence of his friends) is thus deprived of his unquestionable right to treatment which may save him from an incurable issue of his malady.*

An individual treatment so desirable for the patient, substituted to a sort of wholesale enterprise of keeping, would even be profitable to our public charities. The mistake of these economic Boards is patent.

Certainly, nowadays, as far as general treatment goes and material cares are concerned, the insane are better treated than heretofore. They are taken to beautiful institutions, where however, unhappily, economical laws are supreme, and, we might presume to say, irrationally applied, since the only real profit lies in the cure and not the keeping of an inmate. In spite of the desire of many asylum medical officers, no regular individual clinic has yet been established, and, in actual circumstances, it cannot be.

In a practical mode of expression of facts, could not a cure have some relation and reason accounted for as in financial ledgers under the head of credit and debt? If so, the success of treatment could be traced to a scientific disbursement, the conditions of which ought to be prepared and accounted for in really good hospitals. The final question would then be merely as to cost of cures. But what are the results which can reasonably be expected? Calculations have been made and published in the United States upon these questions, in which the pecuniary advantage is not only shown by what it spares by a shorter residence in the hospital, but by the value of the work done during a mean period of active life, compared with that of the same duration as a chronic insane person in a public institution. The proposed scheme is simple, would apparently cost more, but the result *would pay*. The proposed system consists, for recent and acute cases, in a *daily* annotation of the symptoms, and the prescriptions either moral, hygienic, or pharmaceutic. For chronic cases, such annotations should be made every week; the whole, being transferred on case-books, would bear the signature of the attending physician, and be certified by that of the medical superintendent. What a change would such a law bring in our asylums! Their reputation benefited, and the patients asking for admittance instead of avoiding them; this fact is of the utmost importance.

* The *Annales d'Hygiène Publique et de Médecine Légale* (page 159—1859) make the fullest confession of such fact in France. Unhappily it is the same everywhere. Patients are crammed into large asylums and become incurable because of the fact that they are not individually attended to, in spite of Article XII., Chapter 2, of the French law of the 6th of July, 1838, which says: "Case books shall be kept, in which, once in the month, physicians will note the change effected in the state of each patient." But this article of the law cannot be obeyed. How could a physician, having sometimes 700 patients, do such work every month.

Marcé says in his *Traité des Maladies Mentales* (page 656): Patients are crammed, *without intelligence or morality*, in large asylums, and become incurable for the only reason that they are not treated.

Girard de Cailleux says in his celebrated work, *Etudes pratiques sur les Maladies Nerveuses et Mentales*, that those who dispose forcibly of the person of an insane are bound to furnish them with the means of a cure.

There is another side of the question, relating to the necessity of such law. An officially recorded clinic would be the complementary measure of any improvement of a law concerning the legality of an obligatory confinement. First, such mode of legal treatment would be incompatible with any scientific error or a so-called false imprisonment. Now, supposing that reporters of the press could get admission into an asylum, is it not evident that a daily clinic concerning diagnosis and prognosis of a simulated disease would soon establish the truth? Such medical records would contain the whole history of a case. Nothing could escape the investigation of any public officer or that of a friend of patients. Secondly, there would be a guarantee for physicians against false accusations or intrigues often made by diastrophics and maniacs. Thirdly, such records would, from themselves, show the merit and assiduity of the medical staff. The resumé of all these therapeutical cases would be one of the best means for the advancement of science. With such conditions legally established, the experiment for cure might take place as well in an asylum as in free air institutions called *Gheels*.

Under the actual law, appropriate care and treatment are often delayed, to the great injury of the patient. Some persons, disbelieving the urgency that a patient be put immediately in some institution, employ all means to conceal the infirmity of a friend or patient. In other cases, especially those in which there is a perversion of the instincts or of volition, terrible accidents may and do happen on account of delays which the new law would not permit. It has been questioned publicly, to whom, for instance, the privilege of interference is to be intrusted, and by what solemnities the deprivation of liberty is to be accompanied and recorded. The new law would have nothing to do with these so-called difficulties. What is wanted is that the patient be cured, in order that he may become again a member of society. Anybody may honorably assist to that effect. There is no shame in having a friend insane, and it is a duty to render him the service pointed out by the law. Besides, there is no greater solemnity in making a circumstantial and scientific affidavit; the effect on the position of the individual is only felt when the judge makes an order of confinement. Publicity would not be required or feared in such a preliminary proceeding.

In spite of some very rare exceptions, we must say that isolation among relatives is objectionable for all parties concerned. The obligatory medical treatment has other advantages, which cannot be well shown without referring to the actual system. In every free country the deprivation of one's liberty is the greatest restriction which can be placed on a citizen. To some minds, this restrictive measure conveys the idea of personal degradation. It has been inquired if restrictive measures could not be enforced privately in one's own house. There are grave objections to private or secret isolation. First, how will the patient bear it in his own house? It might become a cause of incurability. Secondly, it might be resorted to unnecessarily, and the physician's opinion might not be preponderant. We have the experience of many families whose fireside, although well governed, was the worst place for the patient to be.

medically treated. Generally, relatives are the worst custodians ; for this reason, that they are unable to trace a moral symptom to its real cause. Constant efforts are made to educe, by reasoning, their friend out of his delusions. With the best views and intentions, they aggravate the disease. Besides, there is also a danger for the family. The patient is a point of contamination, especially if the slightest hereditary predisposition exists. For patients who must be kept in isolation, their liberty and the respect of their rights cannot fall within the range of domestic affairs. If one of the members of a family disappears, has the State or the community not the duty of inquiring what has befallen one of its members? The law might admit that, under the supervision of medical officers appointed by judges, such isolation might take place, but the public would soon find out that special institutions are preferable. Again, the interference of the law is as necessary for the interests of the family as it is useful for the patient. On one side, it settles many questions of false delicacy which may injure the patient, and leaves to the family the power to go beyond, but never to fall short of what belongs to the patient. On the other side, the family is not directly responsible ; the recovered patient can never be dissatisfied with the proceedings employed for his treatment ; he has had the benefit of a really protective law.

Another point of great importance is, as to what such laws should require about the making of medical affidavits or certificates concerning insanity. These legal instruments are of extreme importance. After they establish the probable insanity of a person, and serve to obtain a judicial order for admission into an asylum, their efficacy ceases, and their value must be controlled, admitted, or rejected, by the administrative and medical chief of the asylum—the superintendent. These affidavits, although introductory instruments, should contain all the data of which the asylum officers are absolutely in need. Thus they ought to contain not only the general outlines and a history of the case, with all possible details concerning the patient and his circumstances, but describe the observed indications and symptoms, both moral and physiological. The latter especially must be minutely described, because they are the medical test of the value of such documents. These data are indispensable for the definitive diagnosis made in the asylum. It is easily understood that an individual might simulate with more or less success the moral symptoms, but he could not produce the pathological ones. Medical experts consider generally the coexistence of appreciable signs of a bodily infirmity in co-relation with mental derangement as unequivocal proof. Insanity, like any other disease, has definite forms, recurring through different well-known stages.

In conclusion, I have not the presumption to offer to the Society a perfect scheme. It is simply an idea of what appears to me ought to be discussed, and ultimately perfected. I have no doubt that the above-mentioned evils will be eradicated when a sufficient medical staff, headed by a physician whose responsibility and action should be complete and free, will keep authenticated records of their work and devotion.

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